The Solicitors' Journal

and Weekly Reporter.

(ESTABLISHED IN 1857.)

LONDON, OCTOBER 4, 1919.

ANNUAL SUBSCRIPTION, WHICH MUST BE PAID IN ADVANCE: £2 12s.; by Post, £2 14s.; Foreign, £2 16s.

HALF-YEARLY AND QUARTERLY SUBSCRIPTIONS IN PROPORTION.

*** The Editor cannot undertake to return rejected contributions, and copies should be kept of all articles sent by writers who are not on the regular staff of the JOURNAL.

All letters intended for publication must be authenticated by the name of the writer.

GENERAL HEADINGS.

Case Reported this Week.

Current Topics.

The Railway Strike.

THE RAILWAY strike is causing considerable inconvenience to lawyers as well as to the rest of the world. Fortunately the courts are not sitting, and it may be hoped that it will be over before litigious business in the Supreme Court can be affected by it. But it is probably interfering with county court business, and it has come at an awkward time for the numerous completions of sales fixed for 29th September. Auctions, we notice, are being in many instances postponed. But all this, though troublesome, is slight compared to the dislocation in manufacturing businesses and the distribution of food supplies.

Breach of Contract of Service.

FROM THE legal point of view there seems to be nothing to be said about the strike. We do not know with certainty the terms of the current contracts of service in the railway world, but it has been suggested to us that recently railway employees have been working on a day-to-day contract; a highly inconvenient arrangement if true. We do not notice, however, that the Government, in their statements of the official view, have laid stress on breach of contract, and in any case it would not make much practical difference. [But see the statement of Thursday evening, published as we go to press.] There is no statutory provision applying to railwaymen such as section 4 of the Conspiracy and Protection of Property Act, 1875, which makes it an offence for persons employed by a municipal authority or a statutory company in connection with the supply of gas or water "wilfully and maliciously" to break their contracts of service, if the effect will be to deprive the public of their gas or water supply. Section 5 of the same statute contains a more general provision, and applies "where any person wilfully and maliciously breaks a contract of service or hiring, knowing or having reasonable cause to believe that the probable consequences of his doing so, either alone or in combination with others, will be to endanger human life, or to expose valuable property, whether real or personal, to destruction or serious injury," and if there have been breaches of contracts of service, this provision would probably be available. But in fact the strike is much too general and involves issues too serious for there to be any question of dealing with individual cases by proceedings, whether criminal or civil, based on breach of contract.

The Legality of Strikes.

THE MERITS of the strike it is not for us to discuss. The right to strike is recognized, and the conduct of a strike in certain respects recognized, by the Trade Union Act, 1871,

the Conspiracy and Protection of Property Act, 1875, and the Trade Disputes Act, 1906. In the past the suffering caused by a strike has usually been chiefly felt by the workmen and their families, but this has been largely alleviated by the accumulation of trade union funds. The burden of the present strike falls mainly on the public, but that, while affording the strongest inducement for attempting to settle it with justice to both sides does not *primâ facie* alter the legal aspect, though we do not suppose the law would be powerless could it be proved that individuals were aiming at the safety of the State. This is a qualification we make as a legal point without suggesting that such is in the present case the fact. It is noteworthy that the strike is coincident with the establishment of the Ministry of Transport and the passing of the railways under Government control, and the matter has an important bearing on the question of nationalization. This aspect of it will, we imagine, not be forgotten. As to the actual wages in dispute, it may be pointed out that the rates quoted take no account of the tips which are not an unimportant feature in the remuneration of certain classes of employees, and which it is now well settled must be legally recognized as part of their earnings: *Penn* v. *Spiers and Pond, Ltd.* (1908, 1 K. B. 766); *Great Western Railway Co.* v. *Helps* (1918, A.C. 141). But, so far as we can judge, the real matter in dispute is not so much the actual amount of the wages—though this no doubt is very important—as the question of the proper treatment of particular grades in relation to other grades, and also in relation to wages in other employments.

Government Regulations and the Strike.

It is a fortunate coincidence that the strike has come before the "end of the war," for this circumstance lends plausibility to the use which the Government are making of the Defence of the Realm Regulations to secure the supply and distribution of food. Those regulations rest upon the provision of section 1 (1) of the Defence of the Realm Consolidation Act, 1914, under which Orders in Council may be issued "during the continuance of the present war . . . . for securing the public safety and the defence of the realm." It cannot be questioned that the maintenance of the food supply is essential for securing the public safety, but it is arguable that the emergency to be dealt with must be an emergency arising through the action of an enemy State. Practically, however, there will be no disposition to criticize the use of extraordinary powers so long as they are confined to the unexpected emergency which has arisen through the strike.

A Moral Obligation Enforced by the Court.

We know, or have often been told, that law is the perfection of reason and that equity is a kind of sublimated justice. These admirable sentiments, like all high aims and lofty principles, must, however, be taken with a grain of salt, and must necessarily lose some of their lustre when they come to be applied to prosaic facts in a workaday world. No one who has had any experience of legal decisions can fail to have met with many instances in which law has not been conspicuously reasonable nor equity conspicuously just: but this is, of course, due to the fact that law to be useful must be certain, and equity, when translated into practice, must follow certain definite rules which give it stability. The above sayings, therefore, must be regarded as in the nature of pious aspirations, but even regarded as such they serve a very useful purpose. "An ideal," said Herbert Spencer, "far in advance of practicability though it be, is always needful for right guidance. . . . If nothing beyond the exigencies of the moment are attended to and the proximately best is habitually identified with the ultimately best, there cannot be any true progress." This may be a counsel of perfection, but it is one that will appeal to every lawyer who has the real interest of his profession at heart. It is not often that a judge can decide a case apart from and without reference to any rule or precedent, and still less frequently is he able, in spite of a rule of law, to insist on good faith and honesty. Yet this he may do where an officer of the court is a quasi-litigant, and may order such officer to pursue a line of conduct which an honest man, actuated by morality and justice, ought to pursue, though not compellable thereto by legal process. Thus, money will be ordered to be repaid where it has by mistake of law been paid to an officer of the court, as, for instance, to a trustee in bankruptcy or to a receiver, provided that no injustice is done to anyone by the order. This was laid down in *Re Tyler* (1907, 1 K. B. 865), following *Ex parte James* (L. R. 9 Ch. 614), and has recently been enlarged upon in *Re Thellusson* (*ante*, p. 788). The principle of ordering a person to do what is morally right, though no legal claim can be made against him, appears to be unique, and seems to be strictly limited to officers of the court. It might possibly be extended with advantage, but obviously any such extension would have to be made with great caution.

Interrogatories and Sources of Information.

Differences and anomalies in our law are not always the result of archaic conditions which have remained unaltered; they sometimes have arisen of recent years for quite intelligible reasons. A good illustration of what we mean is afforded by the rule relating to interrogatories where a newspaper is the defendant, as illustrated by the recent case of *Lyle-Samuel* v. *Odhams (Limited) and National News (Limited)* (*ante*, p. 748). Here a parliamentary candidate sued the defendants for libel; they were the proprietors, printers and publishers of a newspaper which had attacked him during the contest of 1918. The attack consisted in raising certain matters affecting his domestic life in such a way, he contended, as to prejudice and misrepresent him. The defence was that the facts were true, and the comment was "fair comment on a matter of public interest." Now, wherever there is a defence setting up "fair comment," it is usual for the plaintiff to interrogate the defendants as to their sources of information; the reason is that the fairness of the comment depends partly on the extent to which the defendant relied on reasonable evidence as to the facts when he commented upon them: *Walker* v. *Hodgson* (1909, 1 K. B. 239). This is obviously a reasonable rule, and although at one time there was a tendency to disallow such interrogations as "fishing," the modern practice is to admit them. The plaintiff accordingly sought to interrogate the defendants as to their sources of information. His suggestion was that the information came from persons whom the editor must have known were influenced by private spite. In an ordinary case the interrogatories would have been allowed as a matter of course.

The Privileged Position of Newspapers.

But a special rule of practice has grown up in the case of newspapers. It is recognized that the relationship between the editor and his contributors is, in the nature of things, confidential, and that, although, of course, no legal privilege can be pleaded for the non-disclosure of such confidential communications, yet in fact their case is on a different footing from statements made in private life. In other words, a sort of *quasi*-privilege has come to be recognized. The editor and proprietor may not refuse to disclose names in the witness-box, but they will not be compelled to disclose them in reply to interrogatories. This rule may be regarded as definitely established by the comparatively recent case of *Adams* v. *Hayes-Fisher* (110 L. T. 537), which was followed by the case on which we are commenting. The rule had previously been acted on in the well-known cases of *Plymouth Mutual Society* v. *Traders' Publishers Association* (1906, 1 K. B. 403) and *Digby* v. *Financial News* (1907, 1 K. B. 502); but subject to the qualification that the plaintiff was only disentitled to interrogate because his queries were not believed by the Court to be *bonâ fide* intended to assist his action. One of those cases was not a newspaper case, so that the larger protection now afforded to newspapers was not in issue. A series of previous decisions had also restricted the right to put certain specific questions to newspaper proprietors. In *Gibson* v. *Evans* (1889, 23 Q. B. D. 384) it was held that they cannot be asked to dis-

close the name of the writer of an article complained of, and in *Hennessy* v. *Wright* (1890, 24 Q. B. D. 445) this rule was followed. An exception where the identity of the writer is a fact material to some issue in the action was recognized in *Marriott* v. *Chamberlain* (1886, 17 Q. B. D. 154). A similar provision for the protection of confidence between editor and contributor exists in connection with the production of documents on a notice to produce. The original manuscript of a libel, if produced, would usually disclose the identity of its writer, at least to those acquainted with his handwriting; therefore its production will not be enforced: *Hope* v. *Brash* (1897, 2 Q. B. 188).

The Draft Licensing Bill.

WE HAVE not noticed that there has been any confirmation of the suggestion we made last week that the draft Bill for the change in the licensing system has the approval of the Liquor Control Board, and, indeed, we rather imagine that the Board would favour a more direct measure of State control than anything proposed by the Bill; nor do we suppose that persons interested in licensing reform would see the necessity of public-houses—unless their character is to be radically changed—being open for twelve hours in the day as suggested. This may be materially less than the pre-war hours, but the Liquor Control Board has shown during the war what can be done by the shortening of hours, and the lesson is not likely to be lost sight of. Of course, if the character of public-houses changed, and they became restaurants with liquor as a minor and incidental feature, the question of hours would be changed too.

Pecuniary Deposits upon a Contract.

ONLY a few months ago this most interesting, and frequently important, subject was raised and discussed as acutely as learnedly, upon a contract between certain Staffordshire timber merchants and Leith shipowners. The contract was for the sale of a steamship for £30,000. Of this sum £3,000 was paid on the signing of the agreement for sale and purchase, and this agreement comprised a stipulation that, in default of payment of the residue, the vendors might resell, "the deposit should be forfeited to the sole use of the vendors," and any deficiency borne by the purchasers. The purchasers having repudiated the contract without justification, the interesting questions followed: Was the £3,000 forfeited to the vendors wholly or only partially? Is the stipulation a mere piece of imposing pie-crust?

Most business men would at once reply, "A bargain's a bargain; the whole £3,000 is clearly forfeit. The question can hardly be proposed seriously." The more considerative of law students might perhaps put his opinion on one of three grounds—that a person repudiating a contract is not entitled to rescind it; or that when a person has paid down a sum of money as a security for the due performance of a contract, he cannot have it back upon electing to throw the contract up; or that no person who is in default can be permitted to take advantage of his own default. Yet he might not be prepared to dissent from the popular notion that £3,000 was forfeit. He would refer, for instance, to *Howe* v. *Smith* (27 Ch. Div. 89), to *Lord Elphinstone* v. *The Monkland Iron and Coal Company* (11 App. Cas. 332), to *Soper* v. *Arnold* (14 App. Cas. 429), to the very interesting case of the *Clydebank Engineering and Shipbuilding Company* v. *Don Jose Ramos Yzquierdo y Castaneda* (1905, A.C. 6) upon the contracts by the Spanish Government for torpedo boats, in support of his opinion.

None the less, we find that the purchasers of the s.s. *Giralda* did bring an action in the Scotch courts for the return of the £3,000 they had deposited, pleading that the vendors, having sustained no loss, were not entitled to retain the deposit; or, to put it another way, that this deposit was stipulated for as a mere penalty, and the vendors suffered no damage. We can hardly suppose the action to have been entered, and the result hazarded, without consideration, and it may be useful not to allow the proposition to pass by unheeded or unconsidered.

The suggestion is, that a stipulation for the forfeiture of a deposit is not a question of words, but of substance and things; and hence it may well, upon adequate consideration in a proper case, be perceived to be one for no more than the infliction of a penalty, and, consequently, when properly construed, not enforceable according to its strict terms. At bottom, it would be submitted, it is simply a question of what was the real intention of the parties, as illuminated by the nature of their agreement and the surrounding circumstances. Reference, for example, may be made to the case of *Re the Dagenham (Thames) Dock Company Ex parte Hulse* (8 Ch. 1022), in which Lord Justice MELLISH said: "I have always understood that, where there is a stipulation that if, on a certain day, an agreement remains, either wholly or in part, unperformed—in which case the real damage may be very large or very trifling—there is to be a certain forfeiture incurred, that stipulation is to be treated in the nature of a penalty." His Lordship's view goes farther than that of Baron PARKE, in 1842, in *Horner* v. *Flintoff* (9 M. & W. 680). The learned Baron there remarked that, where parties say that the same ascertained sum shall be paid for the breach of every article of an agreement, however minute and unimportant, they must be considered as not meaning exactly what they say, and a contrary intention may be collected from the other parts of the agreement; and he cited *Kemble* v. *Farren* (6 Bing. 141) as a leading authority. And recent progress in authority is evident from the speeches in the House of Lords in the *Dunlop Pneumatic Tyre Company, Limited* v. *The New Garage and Motor Company, Limited* (1915, A. C. 79), a case which, it may be remarked incidentally, confirms *Kemble* v. *Farren* (*supra*), and is, at the same time, a commentary upon it, and which must be of considerable value to everyone advising on the doctrine laid down in that old case.

Furthermore, reference will surely be made to the option either party possesses, as Lord DAVEY remarks in the *Clydebank Engineering case* (*ubi. sup.*, at p. 16), of showing that the sum named is so exorbitant and extravagant that it could not possibly have been regarded as damages for any possible breach in the contemplation of the parties, and of submitting that this is a reason for interpreting it as a mere penalty. The two recent cases in the Privy Council (*Kilmer* v. *the British Columbia Orchard Lands, Limited*, 1913, A. C. 319, and *Steedman* v. *Drinkle*, 1916, 1 A. C. 275), where the contract contained a clause of forfeiture, in default in payment of an instalment, of all instalments previously paid—and from which forfeiture the party was held entitled to be relieved—will doubtless also be recalled to mind, and read along with a previous case (*Cornwall* v. *Henson*, 1900, 2 Ch. 298) in the Court of Appeal.

It clearly emerges, therefore, that at the root of the matter is interpretation, and the old familiar question whether, on a true construction, a specified sum is stipulated damages or a penalty. And it may not be too much to assert that, as these timber merchants, and many previous contractors, found out to their discomfiture, in the majority of the cases of the kind under review the sum must be in the nature of liquidated damages. The popular argument that a bargain's a bargain can, it should be observed, nevertheless be met by reaching the conclusion that the particular stipulation is not, by general principles of construction, enforceable in law in strictest terms. And, as Lord HALSBURY points out in the *Clydebank Engineering case* (*ubi. sup.*), too much reliance should not be placed on the mere use of certain words; the mere use of the word "penalty" or "damages" is not conclusive respecting the rights of the parties. Indeed, in one leading case the sum is described by the parties as liquidated and ascertained damages, and not a penalty or penal sum or in the nature thereof. What verbiage, it may well be asked, could be stronger or more explicit? And yet the sum was held to be a penalty: *Kemble* v. *Farren* (*ubi. supra*).

After these remarks it surely will not come as a surprise to find a sum stated, in a contract for the construction of a rail-

way, to be "as and for liquidated damages" treated in the Privy Council as not a genuine pre-estimate of loss: *Public Works Commissioner v. Hills* (1906, A. C. 368); and, on the other hand, to find it stated in the Privy Council, that where it is impossible, at the date of contract, to foresee the extent of uncertain injury which might be sustained by its breach, or the cost and difficulty of proving it, and the amount stated for damages is reasonable, then that amount should be recovered as liquidated damages: *Webster* v. *Bosanquet* (1912, A. C. 394). And the draftsman will be the more impressed as to the necessity of circumspection and discretion before penning any stipulation in future, and of expressing it in the most clear and explicit terms.

We must, in conclusion, find space for a few words upon the every-day deposit paid on signing an agreement for the purchase of real or leasehold property. We cannot do better than quote a question and answer of Lord BOWEN's:—"What, in ordinary parlance, and as used in an ordinary contract of sale, is the meaning which business persons would attach to the word deposit? . . . It comes shortly to this, that a deposit, if nothing more be said about it, is, according to the ordinary interpretation of business men, a security for the completion of the purchase" (*Howe* v. *Smith, ubi. supra.*, at p. 98). Many solicitors strike a pen through the clause in a private treaty empowering the vendor to resell if the purchaser fails to complete, although it was treated as an ordinary stipulation by very eminent conveyancers in the past. In consequence, no terms are expressed relative to the money paid as a deposit, and an interpreter has perforce to determine what terms relative thereto are implied. We may say he has good authority for declaring what those implied terms are—namely, that in the event of the purchaser completing the bargain the sum deposited is to be brought into account, while in the event of his failing so to do the sum is to remain the property of the vendor: *Howe* v. *Smith* (*supra*); *Cornwall* v. *Henson* (*supra*); *Hall* v. *Burnell* (1911, 2 Ch. 551), though here too it must be brought into account if the vendor claims the deficiency on a resale: *Shuttleworth* v. *Clews* (1910, 1 Ch. 176). In other words, sums paid upon the signature of a contract for sale have a dual character; they are earnests (*ante*, p. 164; Pollock and Maitland's History of English Law, II., 206)—a something given in earnest to bind the bargain entered into, and as a guarantee that the party giving it means business; and they are, secondly, a part payment. And it is elementary human nature that the fear of the forfeiture of the sum paid should operate forcibly on the mind of the payer to make him fulfil the remainder of his promises.

The Income Tax Commission.

(*Continued from page* 818.)

V.

THE question of the liability of agents to pay tax on the profit of their foreign principals plays a large part in the third instalment of the Minutes of Evidence. Under sect. 41 of the Income Tax Act, 1842, a non-resident carrying on business here was chargeable to income tax in the name of an agent here. In *Grainger and Son* v. *Gough* (1896, A. C. 325), where ROEDERER, of Rheims, obtained orders for champagne through GRAINGER AND SON, but executed them by forwarding the wine himself to buyers here, it was held that ROEDERER did not carry on business in this country, and was intimated that the words in sect. 41, "having the receipt of any profits or gains," qualified "agent," as well as the word "receiver" which immediately preceded them, and hence GRAINGER AND SON were not liable. No action was taken on this decision for a good many years, but it seems to have prompted section 31 of the Finance (No. 2) Act, 1915, which abolishes the requirement of receipt of profits by the agent, and makes the non-resident principal chargeable in the name of the agent for profits arising, whether directly or indirectly, from the agency, and also in cases where the profits cannot be ascertained, substitutes assessment on a percentage of the turnover of the business done through the agent. This change, it appears, has not succeeded in getting income tax out of foreign merchants, who quite repudiate their liability to pay it; but, according to the evidence, it has resulted in great hardship to the agents, who are burdened with personal liability for their principals' tax. Mr. E. BELFOUR, giving evidence on behalf of the London Chamber of Commerce, cites the case of the agent of an Italian textile manufacturer who was charged this year with £8,000 (p. 289). It is alleged that while Mr. MCKENNA, in the House of Commons, said that sect. 31 was aimed at collusive evasion of duty where business was really carried on in this country, it is being interpreted by the Inland Revenue Commissioners so as to penalize the *bonâ fide* agent, with the probable result that agency business will be ruined. And, said Mr. REINGANUM, giving evidence with Mr. BELFOUR (p. 292):

> "If you close down the agent what will result? The foreigner will come here and he will do his business just the same, that is, he will come over, he will take his orders, he will go back to France or Italy or wherever he comes from; he will execute those orders and he will send the goods into the country; or else he will get his orders by mail. He will get the profits on those orders. The Inland Revenue will not be able to annex anything upon them."

And subsequently the same witness said (p. 307):—

> "If by any means the Inland Revenue could be persuaded to suspend the present harassing of agents, which is increasing daily, until this Commission has given its considered Report, or until some action has been taken to clear the matter up, it would be of inestimable service to us, and would spare us a great deal of worry, anxiety, and expense."

Mr. SIDNEY WEBB (p. 339), approaching the subject more dispassionately, says that, logically, the only profit made here is the agent's profit, and that is all that the Inland Revenue should expect to tax; while Sir ARCHIBALD WILLIAMSON, a partner in Balfour, Williamson and Co., and other firms with business connections in the East and South America, thought that the 1915 Act has been an unfortunate example to other countries which had since adopted the same principle, and that the true policy of this country was to encourage the foreign merchant (p. 365). We can conclude the matter by the following (at p. 368):—

> "7551. Mr. MACKINDER: Your broad point, I take it, is that we as a nation stand to gain far more by generous treatment of the foreigner than by attempting to get the last penny in taxation out of him?—Sir ARCHIBALD WILLIAMSON: I think we shall make money by letting him off."

The strange case of Mrs. PURDIE appears to have formed an amusing interlude. Mrs. PURDIE gave evidence for the Women's Freedom League, and there appears to be trouble on account of the statutory definition of "incapacitated person" as meaning any "infant, married woman, lunatic, idiot, or insane person," and that not in some ancient Act, but in sect. 237 of the Income Tax Act, 1918. "This," says Mrs. PURDIE, "conveys the grossest insult to many millions of responsible citizens, members of the electorate of a so-called free and democratic community. These cannot consistently be both responsible electors and on a par with lunatics."

No doubt that is so, and it is quite a good point. But Mrs. PURDIE makes still better use of the fact that the Crown refuses to be bound by the Married Women's Property Act, 1882, and treats the wife's income as the husband's for the purposes of taxation. Hence there proceed, if the wife cares to fight the Commissioners with their own weapons, strange results. For Mrs. PURDIE is, it appears, a professional accountant, and though it seems she makes no return, and her husband cannot do so be-

cause he knows nothing about her business, the Revenue authorities think her good for a duty of £1,250, and charge her with that, and this has gone on since 1910, but not a penny has she paid. And that is because the word "her" which we have just used should be "him." Now all this is kept from Mr. PURDIE. The demand notices go to MRS. PURDIE'S office addressed to him, but they go no further. Mr. PURDIE is, or was, according to his wife, a discharged soldier out of work, so it would not make any difference if they did go further, and apparently the Inland Revenue Authorities see that and do not trouble. To put Mr. PURDIE in prison would not help them, and would be troublesome to him. So Mrs. PURDIE is in the happy position of making an income which the Inland Revenue authorities guess to be that of a High Court Judge, and paying no income tax, because while they have asked her husband to pay, they have never asked her. Suppose, said Lord COLWYN, we ask you this afternoon; but Mrs. PURDIE thought this to be treating a very important thing in a spirit of levity. And it appears there is, apart from the statutory definition and the ignoring of the Married Women's Property Act, at least one significant fact in her favour. Any return on a married woman's tax goes not to her but to her husband. She said in conclusion (p. 337):—

> "I have presented my own case because what applies in my own case applies conversely in the other case of the women whose money is taxed at the source. For the same reason as I cannot be charged they cannot get their money back. The two things hang together. They all depend on the same principle."

Some witnesses recurred to the suggestion of the last Companies' Report that that directors' fees ought not to be paid "free of income tax": Mr. REINAGUM (p. 295), Mr. CASH, for the Institute of Chartered Accountants (p. 408). The question of the limit of income for total exemption was discussed, both from the point of view of "minimum for subsistence," and of "maximum efficiency." But as to what is the irreducible minimum of income necessary for subsistence there is no certainty. Dr. BOWLEY, Professor of Statistics in the University of London, said that in 1914 an unmarried manual worker was comfortably off on a £1 a week; "I have seen him enjoying himself;" and that two married persons could then get along on 25s., though he did not say this was in 1914 the best possible wage. What the corresponding figures should be now he declined to say: "My point is simply that one has not adequate information for getting the factor" (p. 327). Mr. SIDNEY WEBB thought that the "subsistence" theory was wrong, and would substitute efficiency as the test (p. 340).

> "Any taxation, whether by income tax or otherwise, which diminishes the efficiency of any taxpayer is not only not a gain to the Chancellor of the Exchequer, but is a sheer loss; and I need hardly point out that maximum efficiency of the taxpayer has no connection at all, except at extremes, with subsistence level."

But efficiency is not an easy subject to handle. A man, as Mr. WEBB pointed out, should be efficient as a producer of wealth, as the head of a household, and as a citizen, whereupon arose an argument between Mr. KERLY and himself in which the three efficiencies were treated after the manner of a Socratic dialogue, or rather, perhaps, of a theological discussion. Then Mr. WEBB puts the maximum rate of tax at 20s. in the £:—

> 7105. And where would 20s. in the £ begin?—At infinity. That is to say, there ought to be a rising curve which is always getting nearer to the 20s., but reaches it only at infinity.

Doubtless this will soften the matter for those who are familiar with the hyperbola and its asymptotes; but there is the objection of Mr. E. P. NORTON, who was one of a group appearing for the Association of British Chambers of Commerce, that such a system will stop business enterprise. A rich man will not risk capital in new ventures if he is to be allowed only a pittance out of any possible profit, while the State declines to share a loss (p. 396). The question of charging super-tax on bonus shares was discussed in Mr. CASH'S evidence (pp. 414, 421), but this is likely to come into prominence, and we need not follow him. We may conclude with a reference to the evidence of Mr. HAROLD COX, the ABDIEL of finance, or, shall we say, only of the income tax? As to the limit of exemption, he would have no exemption. "That is my whole proposition." Every man who wants a vote should pay income tax, even if it was only 1d. in the £. Mr. Cox admitted that this might not be acceptable to the working classes, but this did not prove it to be wrong (p. 356). "Every income ought to pay, and nobody ought to vote till he has paid his tax." When possible, indirect taxation should be lightened, but direct taxation is, in Mr. Cox's view, essential to citizenship. But, with refreshing candour, he said these were his own views, and he did not profess to represent anyone but himself. And as to his views being practicable (p. 357):—

> 7295. Mr. BOWERMAN: I agree, but is it practicable?—I think in life we have first of all to think what is right and then, secondly, think what is practicable.

(To be continued.)

CASES OF THE WEEK.

Before the Vacation Judge.

Re **MANIHOT RUBBER PLANTATIONS (LIM.) AND** *Re* **THE COMPANIES (CONSOLIDATION) ACT, 1908.** 10th Sept.

COMPANY — REGISTER — RECTIFICATION — REGISTERING TRANSFER OF SHARES—NO DIRECTORS OR SECRETARY—BOOKS IN CUSTODY OF SOLICITORS TO THE COMPANY—NO ONE HAVING AUTHORITY TO CARRY OUT ORDER OF COURT—ORDER 42, R. 30.

Shares belonging to an alien enemy were after the declaration of war vested in the Public Trustee and sold by him. A four-day order was obtained, directing the company to rectify the register of members, but that order was not complied with. The solicitors to the company stated in correspondence they had the books of the company, but that all the directors and secretary had resigned.

Held, that the Public Trustee was entitled to an order to carry out the transfer of the shares, and while no order was made on the solicitors of the company to produce the books in their custody for that purpose on the motion, the Court intimated that nothing ought to be done by them to obstruct the carrying out of the order.

Motion upon notice. The Public Trustee moved for the rectification of the register of the Manihot Rubber Plantations (Limited). The application was for a direction under the provisions of R.S.C., ord. 42, r. 30, that the applicant, or some other fit person, should be appointed to rectify the register by transferring into the name of the applicant certain shares now standing in the name of an alien enemy which had become vested in the Public Trustee under section 4 of the Trading with the Enemy (Amendment) Act, 1919. The Trustee sold these shares for £800 odd; they were duly transferred, and the company was called upon to register the transfer, notice to that effect being given the company on 4th March last, in accordance with section 32 of the Companies Act. On the hearing of the motion the company did not appear, and a four-days' order was

made, directing the company to rectify the register of members in the manner set out in the schedule to the order. The company failed to do this, and in the course of correspondence the solicitors to the company informed the Public Trustee that there were no directors and no secretary, but that they (the solicitors) had got the books and documents of the company in their hands. The order, made on 4th March, could not be carried out, and the present application had therefore to be made to the Court. The Trustee also asked for a consequential order that the solicitors should produce the books and documents of the company. [GREER, J.—I doubt if I have power to make such an order on the present application.] Unless such an order were made, the first order requiring the transfer to be registered would not be effective, and it would seem to follow as a natural sequence to the power given by ord. 42, r. 30 (see *per* Kekewich, J., in *Re L.L. Syndicate (Limited)*, 17 T. L. R. 711, and referred to in a note to the order in R.S.C.). No one appeared for the company.

GREER, J., said that this was an application by the Public Trustee for an order for the rectification of the register of this company, and in his opinion he was entitled to make the order as asked. The Public Trustee, owing to his many other duties, desired that someone should be appointed to act for him, and Mr. Arthur Herbert Harding, a solicitor engaged in the office of the Public Trustee, had been suggested as a fit and proper person, and he should appoint him. As for the further order, directing that the solicitors of the company should produce the books and documents necessary for the carrying through of the transfer, he was not prepared to make any such order then. He wished, however, to express his opinion that nothing ought to be done by them to obstruct the carrying out of the order of the Court. The costs of this application would be paid by the company.—COUNSEL, for the Public Trustee, *R. W. Turnbull*. SOLICITORS, *Linklater & Co.*

[Reported by ERSKINE REID, Barrister-at-Law.]

New Orders, &c.

The Re-opening of the Courts.

SERVICE AT WESTMINSTER ABBEY, MONDAY, OCTOBER 13TH, 1919.

On the occasion of the re-opening of the Law Courts, a Special Service will be held at Westminster Abbey, at 11.45 a.m., which the Lord Chancellor and His Majesty's Judges will attend.

In order to ascertain what space will be required, members of the Junior Bar wishing to be present are requested to send their names to the Secretary of the General Council of the Bar, 5, Stone-buildings, Lincoln's-inn, W.C., before 4 p.m., on Friday, the 10th October.

Barristers attending the service must wear robes. All should be at the Jerusalem Chamber, Westminster Abbey (Dean's Yard Entrance), where robing accommodation will be provided, not later than 11.30 a.m.

Barristers now serving in His Majesty's Forces may, if it is more convenient to them, appear at the Service in Military Uniform and not in their robes.

A limited number of seats in the South Transept will be reserved for friends of Members of the Bar, to whom two tickets of admission will be issued on application to the Secretary of the General Council of the Bar.

No tickets are required for admission to the North Transept, which is open to the public. GORDON HEWART, *Attorney-General*.

Board of Trade Orders.

THE GAS AND COAL (EMERGENCY) ORDER, 1919.

1. This Order shall apply to all Gas Works throughout the United Kingdom.

2. No persons who supply Gas under Statutory Authority shall use or permit to be used in the production of Gas a greater amount of Coal than will suffice to produce Gas of a quality 15 per centum lower than the quality prescribed by any special Act or Order for the time being applying to their undertaking.

3. No other persons who supply Gas shall use or permit to be used in the production of Gas a greater amount of Coal than will suffice to produce Gas of a calorific value exceeding 425 B. Th. U. gross.

5. All persons supplying Gas shall notify the Local Authority of the District by notice in writing, and shall notify their consumers by newspaper advertisements and placards of such periods of the day and night during which the pressure of Gas will be insufficient to permit of its effective use in consumers' fittings and apparatus.

7. This Order may be cited as the Gas and Coal (Emergency) Order, 1919.

26th September. *Gazette*, 30th September.

[Made under Regulations 2r and 2ss of the Defence of the Realm Regulations.]

THE LIGHTING, HEATING AND POWER (EMERGENCY) ORDER, 1919.

(1) All lights of the following classes and descriptions shall be extinguished and such lights shall not be lighted at any hour except as provided in paragraph (2) hereof.

(a) Sky signs, illuminated facias, illuminated advertisements and other lights used outside or at the entrance to any premises for the purpose of advertisement or display.

(b) Lights used inside any shop for the purpose of advertisement or display when the shop is closed for serving customers.

(2) This Order shall not apply to any public street light or any other light approved by the Chief Officer of Police as necessary in the public interest.

(3) The expression "Shop" in this Order has the same meaning as in the Shops Act, 1912.

This Order shall apply to the whole of Great Britain and shall take effect on the signing hereof.

26th September. *Gazette*, 30th September.

[Made under Regulations 2r and 2ss of the Defence of the Realm Regulations.]

THE COAL AND FUEL (EMERGENCY) ORDER, 1919.

1. The Controller of Coal Mines may by notice declare a state of emergency to exist, whereupon the following provisions of this Order shall forthwith come into force and continue in force until he shall by notice declare the state of emergency to have ceased.

2. This Order shall be read as one with the Household Fuel and Lighting Order, 1919 (hereinafter referred to as "the principal Order").

3. It shall not be lawful without the previous consent in writing of the Local Fuel Overseer, which consent may be general or special, but, if general, must be with the assent of the Controller:

(*a*) to purchase, obtain, take delivery of, or in any way acquire more than 1 cwt. of coal in any week for consumption in any premises coming within the scope of the principal Order;

(*b*) to purchase, obtain, take delivery of, or in any way acquire any coal for consumption in such premises as aforesaid where the quantity of coal available for consumption in such premises exceeds 10 cwts.

6. The Local Fuel Overseer may direct that any supply of gas or electricity covered by the principal Order be cut off where there is reason to believe that the supply is being abused or used in excess so as to prejudice the interests of the public.

7. Where the principal Order is in conflict with this Order this Order shall prevail, but otherwise the principal Order remains in force. There shall be no claim for any allowances of coal under the principal Order so long as this Order continues in force.

9. The Local Fuel Overseer may, with the assent of the Controller, take any action necessary for the enforcement of the provisions of this Order, or the Controller may take such action.

10. This Order may be cited as the Coal and Fuel (Emergency) Order, 1919.

26th September. *Gazette*, 30th September.

[Made under Regulations 2r, 2s, and 2ss of the Defence of the Realm Regulations.]

COAL AND FUEL (EMERGENCY) ORDER, 1919.

I, Sir Evan Davies Jones, Baronet, Controller of Coal Mines, hereby declare that as and from 1 a.m. on Saturday, the 27th day of September, 1919, a state of emergency as contemplated by Clause 1 of the above Order exists, and that, therefore, the terms and provisions of the above Order come into effect as and from that time and continue in force until further notice by me.

EVAN D. JONES, *Controller of Coal Mines.*

Coal Mines Department, Holborn Viaduct Hotel, London, E.C. 1.
26th September. *Gazette*, 30th September.

Ministry of Munitions Order.

The 1918 Crop Rescutched Tow (Ireland) Order, dated the 25th October, 1918, is to be cancelled as from the 31st October, 1919, by the 1918 Crop Rescutched Tow (Ireland) (Cancellation) Order, 1919.

26th September. [*Gazette*, 24th September.

Agricultural Wages Board (England and Wales) Order.

The following Notices have been issued under the Corn Production Act, 1917 :—

Proposal to vary the definition of overtime employment in Northumberland and Durham.

Proposal to vary the special minimum rates of wages at present in force for a special class of male workers in Northumberland and Durham.

[*Gazette*, 24th September.

Ministry of Food Orders.

ROYAL COMMISSION ON WHEAT SUPPLIES.

The Royal Commission on Wheat Supplies hereby give notice that the restrictions imposed by the directions dated the 12th December, 1918, shall, on and after the 23rd September, 1919, cease to have effect in so far as the said directions relate to Oats.

23rd September. [*Gazette*, 26th September.

THE STONE FRUIT (JAM MANUFACTURERS' PRICES) ORDER, 1919.

Notice of Revocation.

The Food Controller hereby revokes as from the 28th August, 1919, the Stone Fruit (Jam Manufacturers' Prices) Order, 1919 [S. R. & O. No. 970 of 1919], but without prejudice to any proceedings in respect of any contravention thereof.

28th August.

THE SWEDES (PRICES) ORDER, 1917.

Notice of Revocation.

The Food Controller hereby revokes as from the 11th September, 1919, the Swedes (Prices) Order, 1917 [S.R. & O., No. 260 of 1917], but without prejudice to any proceedings in respect of any contravention thereof.

4th September.

THE RATIONING ORDER, 1918.

General Licence.

On and after the 9th September, 1919, the exemption from Clauses 20 and 21 of the above Order which is contained in Clause 22 thereof as amended, shall until further notice be extended to any catering establishment where no meal is served at a price exceeding 1s. 6d. (excluding the usual charge for beverages).

9th September.

The following Food Order has also been issued :—

The Road Transport Order, 1919, dated 27th August, 1919, made by the Food Controller under the Defence of the Realm Regulations.

At Lambeth Police Court, on Monday, Mr. Chester Jones said that a man had complained to him that his landlord, after giving him notice to quit, entered his rooms during his absence and moved his furniture out. "I think it ought to be understood," said the magistrate, "that no landlord has any right to turn a man out, even if he has given him notice, without an order from this Court or from the County Court, and if at any future time a case is brought before me in which a landlord has taken any such action, I intend to have the papers put before the Director of Public Prosecutions."

The Workmen's Compensation Committee.

The position of Great Britain compared with Germany and America in regard to workmen's compensation was discussed at the Home Office on the 16th ult. by the Special Committee appointed by the Home Secretary to inquire into the working of the present system. It was the first meeting of the committee since the summer vacation, and in view of the urgency of the question it was decided to expedite the investigation by sitting three days a week. The terms of reference are to consider—(1) the desirability or otherwise of establishing a system of accident insurance under the control or supervision of the State, and (2) the basis of compensation. In addition to representatives of large employers, invitations have been issued to trade union leaders to give evidence, and have elicited favourable replies.

Mr. C. M. Knowles dealt in evidence with foreign workmen's compensation laws and described in detail the schemes of mutual insurance in Germany, Austria, and Switzerland, and the State Compensation Fund in America. Each of those countries, he said, was far in advance of England in this matter. Brigadier-General Sir Alexander Gibb gave evidence on the operation of workmen's compensation in connection with large Admiralty contracts, such as that at Rosyth.

It was announced that numerous letters were reaching the committee from all parts of the country, complaining that the maximum compensation of 25s. a week allowed under the Act of 1906 was inadequate to meet the present-day high cost of living. The writers in every instance were totally incapacitated, and some of them stated that they were reduced to a state of semi-starvation. The committee agreed to give careful consideration to the matter with a view, if possible, to securing an increase in the allowances to meet the new economic conditions.

The Ministry of Health Consultative Councils.

The constitution of the Consultative Councils set up to advise the Ministry of Health is announced. For England there will be four such councils, to advise on (1) Medical and Allied Services; (2) National Health Insurance; (3) Local Health Administration; and (4) General Health Questions. The secretary will be Mr. Michael Heseltine, C.B., Ministry of Health, Whitehall, S.W. 1. The councils will consist of twenty members each, but they may for special purposes appoint committees on which other persons may be co-opted. The membership of the Consultative Council on General Health Questions is not yet completely settled, but at least half its members will be women.

The Council on Medical and Allied Services will deal with the extension of medical, nursing and midwifery work. Sir Bertrand Dawson is chairman and Col. C. J. Bond, F.R.C.S., Leicester, vice-chairman.

The Council on National Health Insurance will consider problems of approved societies' work arising in the administration of cash benefits. Mr. T. Neill (National Amalgamated Approved Society) is chairman, and Canon F. C. Davies (Manchester Unity), vice-chairman.

Of the Council on Local Health Administration Sir Ryland Adkins, M.P., is chairman, and Mr. W. T. Postlethwaite vice-chairman.

Wales will have one council of thirty members, with Sir Edgar Jones, M.P., as chairman, and Sir Walter P. Nicholas, clerk to Rhondda U.D.C., as vice-chairman.

Obituary.

Mr. B. B. Rogers.

Mr. Benjamin Bickley Rogers, at one time a well-known member of the Equity Bar, died at Twickenham, on 22nd September, at the age of ninety.

Mr. Rogers, says the *Times*, was one of the fortunate few who have succeeded both in law and classical scholarship. Probably he is best known by his translations of Aristophanes; but it must be remembered that these were, in great part, diversions in the life of a Chancery barrister with a large practice.

He was the third son of Francis Rogers; born at Shepton Montagu, in Somerset, on 11th December, 1828; and educated at Bruton School and Cholmeley's School, Highgate (of both of which schools he afterwards became a governor). Elected Scholar of Wadham in June, 1846, he came into residence in 1847, and in 1851 obtained a first-class in *Literæ Humaniores*, along with two other members of his college, F. S. Lea and Albert Watson; J. W. Chitty, of Balliol, and Henry Furneaux, of Corpus, were in the same class. In 1852 he was elected to a Fellowship at Wadham, which he held till 1861, when he vacated it by marriage. Throughout his life he was a constant and popular visitor in the college, which some years ago made him an honorary Fellow. In 1908 he received from the university the honorary degree of D.Litt.

"As an undergraduate," writes one who knew him well, "Rogers was distinguished member of the Union, and became its president. Of him a true story is told—that he made a speech there so eloquent and stirring that he was carried back shoulder high from the Union to his college; the speech was probably delivered in 1848, when political feeling ran high, and was certainly on the Conservative side, to which he adhered with unwavering conviction throughout his life." In 1856 Rogers was called to the Bar by Lincoln's Inn, and soon made a reputation and a practice at the Chancery Bar, from which he retired eventually owing, it is said, to deafness, while still in full intellectual vigour and with good prospects of a judgeship.

But in his retirement he continued his work on Aristophanes, and in 1910, when he was in his eighty-second year, he completed, by the translation of the Acharnians, the whole series of comedies.

Legal News.

Changes in Partnerships.

Dissolution.

William Henry Clarke and Richard Noel Middleton, solicitors (W. H. Clarke, Middleton, & Co.), 12, South-parade, Leeds. Jan. 31. Such business will be carried on in the future by the said William Henry Clarke, the said Richard Noel Middleton having retired from practice as a solicitor. [*Gazette*, Sept. 16.

General.

Sir Charles Chadwyck-Healey, Bt., K.C.B., underwent a serious operation last Saturday. He is progressing as favourably as can be expected, but will be unable to deal with any correspondence for the time being.

Mr. Thomas Holmes-Gore, who was for six years clerk to the Margate magistrates, for ten years assistant clerk at the Mansion House, and for forty-four years clerk to the Bristol magistrates, died on the 27th September, at 4, Windsor-terrace, Clifton, Bristol.

By Decree, dated 26th August, 1919 (published in the *Moniteur Belge* of 1st-2nd September, 1919), a Prize Court has been established at Antwerp to adjudicate upon prizes captured in Belgium or the Belgian Colonies. Appeals may be carried to the Court of Appeal at Brussels. Parties can only be represented before the Court by Belgian subjects inscribed in the roll of "avocats."

The *Times'* correspondent, in a message from Wellington of 25th September, says:—"The first profiteering prosecution against a firm of drapers accused of selling flannel at 107 per cent. gross profit failed, the magistrate holding that, though the price was unreasonably high, a scarcity of such goods caused by the war was not proved. A Bill now before Parliament removes this statutory requirement.

The *Times'* correspondent, in a message from Paris, of 25th September, says:—"A change has been made in the marriage formalities in this country, which have always been irksome. The period for the publication of banns is reduced to ten days. Any widower over the age of twenty-one need no longer produce the written permission of his parents to his marriage or proof of his parents' deaths. The notary's warning for those who are of age and marry for the first time is reduced from thirty to fifteen days. Only two, instead of four, witnesses at the ceremony are henceforth necessary."

In the actions by Mr. Austen Chamberlain, Mr. Walter Long, Sir Eric Geddes, and Sir Auckland Geddes against the *Daily News*, and in the actions by Sir Eric Geddes and Sir Auckland Geddes against the *Nation*, in respect of alleged libels in connection with investments in Russian securities, the Master has given leave for the pleadings in all the actions to be delivered during the Long Vacation, so that they may come on for trial early next sittings. Sir John Simon has been retained as leading counsel for Mr. Austen Chamberlain, and Sir Edward Carson will lead for Mr. Walter Long, Sir Eric Geddes, and Sir Auckland Geddes.

Winding-up Notices.

JOINT STOCK COMPANIES.

LIMITED IN CHANCERY.

London Gazette.—Friday, Sept. 26.

Derby Laundry Co., Ltd.—Creditors are required, on or before Oct. 25, to send their names and addresses, and the particulars of their debts or claims, to Joseph Sedgwick, 36, St. Mary's-gate, Derby, liquidator.

Hammond Manufacturing Co., Ltd.—Creditors are required, on or before Oct. 25, to send their names and addresses, and the particulars of their debts or claims, to Joseph Sedgwick, 36, St. Mary's-gate, Derby, liquidator.

Sapphire Bay Shipping Co., Ltd.—Creditors are required, on or before Oct. 31, to send their names and addresses, and the particulars of their debts or claims, to Alfred Ernest Webster, 52, Gracechurch-st., liquidator.

London Gazette.—Tuesday, Sept. 30.

British Shipmasters and Officers Protection Society, (In Voluntary Liquidation).—Creditors are required, on or before Oct. 20, to send their names and addresses, and particulars of the debts or claims, to Alexander McKenzie and William Hughes, 32, West Sunniside, Sunderland, liquidators.

Citrus, Ltd.—Creditors are required, on or before Oct. 15, to send their names and addresses, and particulars of their debts and claims, to R. E. Brounger, 57, Bishopsgate, liquidator.

Theo. Brocker & Co., Ltd. (In Voluntary Liquidation).—Creditors are required, on or before Nov. 15, to send their names and addresses, and the particulars of their debts or claims, to John William Hinks, 115, Colmore-row, Birmingham, liquidator.

Resolutions for Winding-up Voluntarily.

London Gazette.—Friday, Sept. 26.

Hamaide, Ltd.
New Peto & Radford Accumulator Co., Ltd.
Peto & Radford, Ltd.
Republic Rubber Co., Ltd.
Aerators, Ltd.
Services Maritimes Du Tréport, Ltd.
James Cheetham & Sons, Ltd.
North Western Hotel, Ltd.
Cleckheaton and Spen Valley Conservative Club Buildings Co., Ltd.